



Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

Room 140
Prince George's County Office Building
1801 McCormick Drive, Largo, Maryland 20774
Friday, September 13, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Toni Holness, American Civil Liberties Union; Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Lt. Colonel David Ruel, Maryland State Police; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); Nicole Hanson, Executive Director, Out for Justice; Katherine Dorian, Esq., Maryland Office of the Attorney General; and Anthony McNeil, Farming4Hunger..

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Michael Yeagy, Maryland Retailers Association; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: Captain Michael Moore, Department of Public Safety and Corrections; Don Hogan, Governor Hogan's Legislative Office; Anthony Baranauskas, GOCCP; Steven Clark, Legislative Aide for Senator Hough; Dwayne "Shorty" Davis Sr., Out for Justice; Fay Hayes, Out for Justice; Robert Perkins, Out for Justice.

Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:30 a.m. as he welcomed everyone to the fourth *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked Prince George's County and Delegate Fisher for hosting the meeting. Senator Hough mentioned that the fifth meeting will occur in November in Frederick County, and the final meeting to "wrap-up" the Task Force's recommendations and findings will occur in December in Annapolis. Senator Hough then read the legislation that created the task force and reminded the members of their duties.

Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.



Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the July meeting and asked if any changes were needed. A motion was made by Ms. Siegfried to make a change to page three of the July minutes. The changes add the clause, “because of conspiracy” to page three of the minutes. The motion was seconded by Senator Hough and then approved by the body. He then asked for a motion to approve the minutes. A motion was made to adopt the minutes which was seconded by Delegate Fisher and approved by the body.

Presentations

Use of Current Gang/Organized Crime Statutes in Prosecution

Senator Hough invited Katie Dorian, Esq., to present on the gang statute and criminal laws from the perspective of the Office of the Attorney General (“OAG”). Ms. Dorian said that the OAG focuses on gang and organized crime prosecution cases. Most cases handled by OAG are multi-defendant and spread across multiple jurisdictions. Ms. Dorian then passed out a handout breaking down *Criminal Law Article* §9A-804, which is a commonly used statute in prosecuting gang violence cases. This statute is used to prosecute those who “Participate in a Gang with Knowledge of Gang’s Engagement in Criminal Activity.”

Ms. Dorian proceeded to breakdown the elements of the statute. In order to be convicted for a violation of §9A-804, one must (1) be involved in a group or association of three or more individuals whose members, (2) individually or collectively engage in a pattern of criminal gang activity (two or more underlying crimes provided in the statute, and (3) have in common an overt or covert organizational or command structure knowing the member of the gang engages in a pattern of criminal gang activity. After going through §9A-804, Ms. Dorian referenced the less commonly used gang statutes in the *Criminal Law Article* found between §9A-801 through 9A-807. These statutes cover other facets of gang violence, including; threats or coercion to join a gang, gang activity near a school, organization or managing a gang.

Ms. Dorian then referenced raw data on gang convictions in the State of Maryland. 8 of 24 jurisdictions in Maryland have convicted defendants under the current gang statutes. Of the 88 total convictions, 29 have been from Prince George’s County, 21 from Baltimore County, 12 from Montgomery County, 9 from Frederick County, 6 from Worcester County, 6 from Anne Arundel County, and 1 from Somerset County. Most of the convictions were from lower level gang members, as only one conviction was made under §9A-805 statute which covers managing, financing, or organizing gang operations.

Ms. Dorian concluded that while the current gang statutes have a high threshold to meet in order to support a conviction, it is appropriate to use these statutes with discretion. Additionally, Ms.



Dorian commented on the need for victim and witness relocation resources in order to turn former associates against Defendants during trial.

Delegate Fisher said that she would like to see stats from other states compared to Maryland regarding use of gang statutes. Ms. Holness asked whether a prosecutor has to prove the underlying crimes in use of gang statutes. Ms. Dorian responded that the prosecutor is not required to charge the underlying crimes, but is required to prove them in order to support a conviction using the current gang statutes.

Delegate Pippy asked for statistics regarding how many defendants were charged versus how many were convicted. Ms. Dorian responded that the Sentencing Commission does not track this information, but the local State's Attorney Offices would have this information. Ms. Siegfried followed by asking whether the OAG had oversight similar to what exists in the Department of Justice. Ms. Dorian responded that OAG only gets involved in cases that cross county lines or those referred to by local State's Attorney Offices.

Mr. Trusty expressed concern that there are many "walk away cases", where prosecutors do not use the gang statutes because the threshold is too high. Additionally, Mr. Trusty stated factually that incidents of witness intimidation rise in accordance with charges under the gang statutes. Ms. Hanson echoed the need for resources for witness relocation resources. Mr. Hogan commented on the FY 20 Operating Budget inclusion of \$2.4 million additional funding for victim and witness relocation funding in Baltimore City.

"Investing in Communities, Not Prisons"

Senator Hough invited Executive Director Nicole Hanson from Out for Justice to present before the work group. Out for Justice is a non-profit group established in 2006 that focuses on helping the formerly incarcerated by giving back to the community through legislation and involvement.

Ms. Hanson presented on the factors that lead individuals to join gangs, including; safety, isolation, and involvement in the legal system. Additionally, Ms. Hanson discussed the impacts of the 1993 Federal Crime Bill and War on Drugs on communities of color. Ms. Hanson expressed her concern regarding apparent racial disparities in incarceration and criminal sentencing. She concluded her presentation by expressing her desire not to change the current gang statutes because there is a greater need for prevention and diversion programs rather than increased law enforcement. Senator Hough asked about a provision in a previous bill, SB 198 from 2018 which would provide proactive resources on top of enhanced penalties for gang violence. Ms. Hanson said yes, because there needs to be an avenue for gang members to exit the organization.



Discussion

The roundtable discussion focused on the inclusion of gang member's names and affiliations in government databases. Ms. Hanson expressed the desire to eliminate labels in government databases, due to the harsh impact the labels can have after the individual has left the gang. Lt. Colonel David Ruel and Mr. Sage both said that if databases do not receive new information within 5 years, the data is purged pursuant to federal law. Mr. Trusty responded and said the database info is not admissible in court. Ms. Siegfried concurred, but said the information could impact whether or not the individual is released from prison during the pre-trial process or receives a transfer to juvenile court. Ms. Holness agreed, and asked for more information from neighboring states on ways to incentivize gang members to disaffiliate.

Public Comment

Senator Hough then opened the meeting up to public comment. The first person to comment was Dwayne "Shorty" Davis, Sr. Mr. Davis is a filmmaker and a self-described whistleblower who is a member of Out for Justice. He discussed the lasting impact of the 1857 *Dred Scott v. Sandford* decision and recounted his own experience in the legal system. The second member of the public to comment was Fay Hayes from Out for Justice. Ms. Hayes expressed her concern over government databases containing names of gang members, and asked why information was purged after 5 years and not sooner. Lt. Colonel Ruel responded that the determination is set by federal law. The final member of the public to comment was Robert Perkins from Out for Justice. Mr. Perkins expressed his concern regarding witness relocation and asked how decisions are made concerning relocation. Mr. Hogan responded that the Maryland State's Attorney Association will be providing the funding to Baltimore, and then it will be up to the Baltimore City State's Attorney Office to make a determination on how to distribute the funds.

Closing Remarks

Senator Hough thanked Ms. Dorian, Ms. Hanson, and members of the public for their comments. The meeting adjourned at 11:30 a.m.